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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 29, 2015
84th Legislature, Number 59
The House convenes at 10 a.m.
Part One

Twenty-two bills are on the daily calendar for second-reading consideration today. The bills analyzed in Part One of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
84(R) - 59

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, April 29, 2015
84th Legislature, Number 59
Part 1

SUBJECT: Transferring oversight of driver education programs to TDLR

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 9 ayes — Smith, Gutierrez, Geren, Goldman, Guillen, Kuempel, Miles, D. Miller, S. Thompson

0 nays

WITNESSES: For — Kevin Makal, Texas Driver Training Safety Education Association; (*Registered, but did not testify*: Chris Shields, American Safety Council)

Against — Eric Givilancz, Roadworthy Driving Academy; Brandi Bowers, Debora Callahan, Dorothy DeWalt, and Mary Gregory-Fox, Texas Professional Drivers Education Association; Patrick Barrett; Tonya Dansby; Tom Pennington; Ruben Vargas; (*Registered, but did not testify*: Cecilia Jackson and Earnest Weatherford, Texas Professional Drivers Education Association; Charles Dansby; Lauro Flores; Jim Mills; Ezra Reed)

On — Karen Latta, Sunset Advisory Commission; William Kuntz, Texas Department of Licensing and Regulation; (*Registered, but did not testify*: Michael Strawn, Department of Public Safety; Gaye Estes and Luke Martin, Education Service Center, Region 13; Julie Beisert-Smith, Texas Education Agency)

BACKGROUND: Under Education Code, ch. 1001, the Texas Education Agency oversees the licensing and curriculum of private driver training schools, including driver education schools and driving safety schools. This chapter establishes licensing and registration fees for these programs, as well as fines for provider noncompliance.

Under Transportation Code, sec. 521.205, the Department of Public Safety (DPS) oversees parent-taught driver education programs. DPS approves and licenses course providers that sell driver-education programs

and associated materials to family members, often parents or guardians, who serve as instructors to the student driver during the in-car portion of the program.

DIGEST:

CSHB 1786 would amend Education Code, ch. 1001 to move authority over the driver and traffic safety education program, which governs driver training schools, from the Texas Education Agency (TEA) to the Texas Department of Licensing and Regulation (TDLR). It also would move oversight of parent-taught driver education programs from the Department of Public Safety (DPS) to TDLR by repealing Transportation Code, sec. 521.205 and placing its provisions in Education Code, ch. 1001.

In addition, the bill would place TDLR, instead of TEA, in charge of developing driver education and traffic safety programs offered as courses to students in public schools. Driver education courses offered by institutions of higher education also would be approved by TDLR, rather than by TEA as under current law.

Other changes would include creating an advisory committee for the driver education programs and allowing TDLR to set fee amounts under that chapter.

Parent-taught programs. CSHB 1786 would place provisions governing parent-taught driver education programs in Education Code, ch. 1001 under the authority of TDLR. Completion of a parent-taught course would be equivalent to the completion of another driver education course approved under ch. 1001.

The commission, by rule, would approve driver education courses conducted by parents or other older relatives of a student driver seeking to obtain a class C driver's license to instruct the person in how to operate a motor vehicle. The rules would require that students spend a minimum number of hours in the classroom and behind-the-wheel and that the instructor related to the student meet certain standards related to his or her driving record, criminal record, and mental health.

CSHB 1786 would allow TDLR to approve a parent-taught program if it determined that the course materials were at least equal to those required

in a course approved by the department elsewhere in ch. 1001. The rules would have to specify a method for approving courses, submitting proof of course completion and passage of the exam, electronic administration of the highway sign and traffic law examination component, and alternative course material delivery methods, including by electronic means.

Fees for driver education providers. CSHB 1786 would authorize TDLR to set application, license, and registration fees for providers regulated under ch. 1001. It would strike the statutory values of the fees currently in the Education Code, giving the department discretion over the fee amounts.

Advisory committee. CSHB 1786 would require the Texas Commission of Licensing and Regulation (TCLR) to establish an advisory committee to advise TDLR and the commission on how to administer the driver education programs under ch. 1001. The committee would consist of nine members serving staggered six-year terms. The commission's presiding officer would appoint to the committee one member to represent the public along with one representative from each of the following stakeholder groups:

- driver education schools that offer traditional classroom courses, alternative instruction methods, *and* in-car training;
- driver education schools that offer traditional classroom courses, alternative instruction methods, *or* in-car training;
- driving safety schools that offer traditional classroom courses or provide alternative instruction methods;
- driving safety course providers approved for traditional classroom courses *and* for alternative instruction methods;
- driving safety course providers approved for traditional classroom courses *or* for alternative instruction methods;
- licensed driving instructors;
- the Department of Public Safety; and
- drug-and-alcohol-driving-awareness program course providers.

The presiding officer of the commission would appoint the presiding

officer of the committee, who would be a voting member. The committee would meet at the call of the presiding officer. Other provisions related to the advisory committee would address term limits, the process for filling a vacancy or removing a member, and requirements regarding compensation and expense reimbursement.

Effective date and other provisions. CSHB 1786 would make technical revisions throughout Education Code, ch. 1001 and would repeal numerous sections in that chapter to reflect changes made by the bill. Existing rules, policies, procedures, decisions, and forms adopted by TEA and DPS relating to ch. 1001 would remain in effect until they were replaced by TDLR or TCLR.

On the bill's effective date, all full-time equivalent employee positions at Education Service Center (ESC) Region 13 that currently support TEA in administering driver education programs would become positions at TDLR. When filling the positions, TDLR would give first consideration to an applicant who immediately prior was an employee at ESC Region 13 primarily involved in administering or enforcing Chapter 1001.

CSHB 1786 would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1786 would improve the regulation of driver education programs by enacting recommendations from the Sunset Advisory Commission's 2012-13 review of the Texas Education Agency (TEA). In particular, it would reassign oversight of private driver training schools to the Texas Department of Licensing and Regulation (TDLR), freeing up resources for TEA. Other Sunset Advisory Commission recommendations that appear in the bill include forming an advisory committee and removing fixed fees from statute.

While administering public education is TEA's core competency, regulating private driver education programs is not. By contrast, TDLR has expertise in regulating businesses of all sorts. In addition, TEA contracts out the majority of its supervision of driver's education to the Education Service Center (ESC), Region 13, so driving schools are well accustomed to interacting with staff outside TEA. Many of these staff likely would join TDLR after the transfer of authority over driver training,

which would give the department even more expertise in this area. It is reasonable to expect that TDLR would regulate driving schools and instructors with great success.

According to the Legislative Budget Board, the bill would create modest savings to the state by transferring the programs to TDLR. The bill would further improve efficiency by moving oversight of parent-taught driver education programs from DPS to the department, meaning that the department would oversee all private driver education programs. In addition, rather than anticipating a stiff hike in fees, the fiscal note estimates that revenue collection from fees would remain stable following the transition of driver education programs to the department.

OPPONENTS SAY:

Driver education is an educational matter and thus should remain under the oversight of the TEA. Driving instructors teach young people to perform an inherently dangerous activity, and they should be overseen by fellow educators at TEA, rather than TDLR. CSHB 1786 would place oversight of driver education under an agency that regulates unrelated businesses, such as hair salons. The education specialists at TEA and ESC Region 13 have provided invaluable support for driving teachers. It is unclear that TDLR could offer the same level of support.

The shift in oversight of most driver education from DPS to TEA in 1989 was followed by a period of uncertainty and a lack of regulatory clarity among driving schools. The transition proposed by CSHB 1786 could result in similar confusion and possible delays in key areas, such as driving education providers receiving or renewing licenses.

Under CSHB 1786, the amounts of fees administered to driving schools would not be written in statute. As a result, TDLR could set fees at an amount that might make it difficult for some driving schools to stay in business.

NOTES:

The Legislative Budget Board estimates CSHB 1786 would have a positive impact of $718,991 to general revenue through fiscal 2016-17.

SUBJECT: Exempting public adjusting services from the sales tax

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner, Wray

0 nays

WITNESSES: For — Scott Friedson and Gary Timmons, Texas Association of Public Insurance Adjusters; (*Registered, but did not testify*: Clay Morrison, Texas Association of Public Insurance Adjusters)

Against — None

BACKGROUND: Tax Code, sec. 151.0101 specifies services that qualify as "taxable services," which are services subject to the sales tax. These include insurance services.

DIGEST: HB 1841 would define "insurance service" to exclude services performed on behalf of an insured person by a public insurance adjuster licensed under Insurance Code, ch. 4102.

The bill would take effect October 1, 2015, and would not affect taxes imposed before that date.

SUPPORTERS SAY: HB 1841 would provide critical relief to Texans who may be afflicted by a natural disaster by exempting public adjuster services from the sales tax. These services often are rendered during a time of loss, and the sales tax is passed directly on to the consumer. The state should do what it can to lower costs for Texans caught in the aftermath of a disaster or tragedy.

Public adjusters serve a vital public purpose. They act as an agent for an insured person when filing a claim with an insurance company. Public adjusters can help clients represent the true loss experienced by an insured person. Because of the public adjuster's expertise and ability, they often receive far higher and more accurate disbursements than would clients

filing a claim on their own.

Applying the sales tax to public adjusting drives up the cost. This means that alternatives to public adjusting, such as litigation, become increasingly attractive. Litigation and other forms of resolution ultimately cost both the insured and the insurer far more in terms of time and money. This bill would cause more Texans concerned about the status of their insurance claim to choose public adjusting, cutting litigation costs.

While this bill does apply an exemption to one specific industry, it is a unique case — taxes on public adjusting directly impact the insured in a time of great loss. This bill would bring Texas up to the national standard and would provide needed tax relief to Texans during critical times.

OPPONENTS SAY:

HB 1841 would reduce state revenue by about $1 million annually. In a time when the state faces a variety of needs in transportation, education, and infrastructure funding, the Legislature should not cut taxes.

This bill also would provide tax relief for a specific industry, which would narrow the base. Texas should strive for a tax system that is broad and low, but this cannot be accomplished if the Legislature continues to give tax cuts to specific industries.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an estimated negative net impact of $2 million through fiscal 2016-17.

SUBJECT: Jurisdiction in eminent domain proceedings in Harris County

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 7 ayes — Deshotel, E. Thompson, Bell, Cyrier, Krause, Lucio III, Sanford

0 nays

WITNESSES: For — Steve Radack, Harris County Precinct 3 Commissioner; Robert Soard and Melissa Spinks, Harris County Attorney's Office; Albert Clay; (*Registered, but did not testify*: Karen Rove, Associated General Contractors of Texas Highway, Heavy Branch; Don McFarlin, City of Houston; Deborah Cartwright, Olson and Olson LLP; Lee Parsley, Texans for Lawsuit Reform; Carol Sims, Texas Civil Justice League; Thure Cannon, Texas Pipeline Association; Michael Garcia, Williams Co.)

Against — (*Registered, but did not testify*: Dixon Montague)

BACKGROUND: Under current law, county civil courts in Harris County have exclusive jurisdiction over eminent domain proceedings. Property Code, sec. 21.014 gives judges who preside over condemnation hearings authority to appoint three disinterested real property owners who reside in the county as special commissioners to assess the damages of the owner of the property being condemned.

DIGEST: HB 2536 would give district courts in Harris County concurrent jurisdiction with county courts over eminent domain proceedings if the amount in controversy exceeded $200,000. The bill would establish that the amount in controversy would be the amount of the bona fide offer made by the entity with eminent domain authority to acquire the property.

This bill would take effect September 1, 2015, and would apply only to an eminent domain proceeding for which a petition was filed on or after that date.

SUPPORTERS SAY: HB 2536 is necessary to streamline the eminent domain process in Harris County. Four county court judges currently hear eminent domain cases.

This bill would expand jurisdiction over eminent domain proceedings to include 24 district court judges, which could help cases get resolved more promptly. District court judges could expand the pool of people serving as special commissioners, which could lead to faster resolution for landowners.

The bill would not take any authority away from the county courts but rather give concurrent jurisdiction to district courts over a limited number of eminent domain cases in which the bona fide offer was greater than $200,000. About 85 percent of eminent domain cases would remain under the exclusive jurisdiction of the county courts.

Cases in which the bona fide offer exceeded the $200,000 limit tend to be more complicated than other eminent domain cases. District courts generally handle more complex cases than county courts, and those judges are well equipped to handle issues that could arise in these cases.

County courts were given exclusive jurisdiction over these cases because of overburdened district court dockets in the 1980s. Dockets in district courts have become much more manageable, and they are fully capable of handling this caseload.

Eminent domain is an important part of providing better transportation solutions and public works projects for residents in Harris County, and the bill would allow these proceedings to function more efficiently.

OPPONENTS SAY:

County courts have proved to be capable of handling eminent domain cases in an efficient manner. They are able to give preferential docket treatment to large eminent domain cases, so the cases that would be covered under this bill actually could go to trial faster in county courts than they would in district courts.

HB 2536 could create substantive and procedural due process issues for property owners involved in eminent domain cases by allowing a party to a lawsuit to decide where it wants the case to be heard. A condemning authority could file a case in county court and later move the case to district court to the detriment and inconvenience of the landowner.

SUBJECT: Allowing stalking victims to use pseudonyms in files, records of offense

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson

0 nays

WITNESSES: For — David Mintz, Texas Apartment Association; (*Registered, but did not testify*: Chris Kaiser, Texas Association Against Sexual Assault; Steve Bresnen, Texas Family Law Foundation; Aaron Setliff, the Texas Council on Family Violence; Lon Craft, Texas Municipal Police Association; Jeffrey Knoll)

Against — (*Registered, but did not testify*: Patricia Cummings, Texas Criminal Defense Lawyers Association)

On — (*Registered, but did not testify*: Kristen Huff, Office of the Attorney General)

DIGEST: CSHB 1293 would allow a victim of an alleged stalking offense to choose to use a pseudonym instead of the person's name in public files and records concerning the offense. These records would include police summary reports, press releases, and records of judicial proceedings.

To elect to use a pseudonym, a victim would have to complete a form developed by the attorney general and return the form to the law enforcement agency investigating the offense. Victims who returned the form could not be required to disclose their name, address, or phone number in connection with the investigation or prosecution of the crime.

The forms would be confidential and could not be disclosed to anyone other than the victim, a defendant in the case, or the defendant's attorney, unless required by a court. Courts could order disclosure of the victim's name and other information only if they found that the information was essential in the trial for the offense, the identity of the victims was in issue, or the disclosure was in the best interest of the victim.

Law enforcement agencies receiving a completed form from a victim would be required to:

- remove the victim's name and substitute the pseudonym on reports, files, and records;
- notify the prosecutor that the victim chose to use the pseudonym;
- give the victim a copy of the completed form; and
- keep the form in a way that protects its confidentiality.

Prosecutors receiving notice of the use of a pseudonym would have to ensure that the victim was designated by the pseudonym in all legal proceedings.

Except as allowed by other laws or a court order, public servants or others with access to the name and other information of a stalking victim younger than 17 could not release the information to anyone who was not assisting in the investigation, prosecution, or defense of the case. This would not apply to the release of information by victims or their parents or guardians, unless the parent or guardians allegedly committed the stalking.

The attorney general would be required to develop by October 1, 2015, a pseudonym form for victims to use to record their name, address, phone number, and pseudonym.

Public servants with access to the name and other information of victims 17 years old or older who chose to use a pseudonym would commit a class C misdemeanor (maximum fine of $500) if they knowingly disclosed the name, address, or telephone number of the victim to anyone who was not assisting in the investigation or prosecution of the offense or to anyone other than defendants, their attorneys, or anyone in a court order.

Unless allowed by law, public servants or other people would commit a class C misdemeanor if they had access to or obtained the name and other information of a victim younger than 17 years old and knowingly disclosed the information to anyone not assisting in the investigation or prosecution of the offense or to anyone other than defendants, their

attorneys, or someone in a court order. It would be an affirmative defense to prosecution in these cases involving victims younger than 17 if the person disclosing the information was the victim or the victim's parent or guardian, unless the parent or guardian allegedly committed the offense.

The bill would not affect a stalking victim's responsibility to provide certain information to landlords when seeking to terminate a lease. In these situations, the pseudonym report would have to be provided to landlords if law enforcement reports identified a victim by a pseudonym.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1293 is needed to ensure the safety of stalking victims by allowing them to keep their personal contact information from appearing in public files relating to their case. Stalking victims can face increased danger when law enforcement authorities become involved in the case because some stalkers may escalate their violence. Using a pseudonym to keep their identity anonymous could help protect these victims.

The bill would help protect stalking victims by allowing them the option to use a pseudonym in police, judicial, and public records. This option currently is available to victims of trafficking, certain sex offenses, and family violence offenses and should be available to stalking victims as well. CSHB 1293 would track provisions allowing for pseudonyms for victims of these other offenses. While using a pseudonym may not be necessary in some stalking cases because victims and the accused are aware of their situation, victims are in the best position to determine if a pseudonym is needed for their safety.

CSHB 1293 would not violate defendants' rights or be unfair to them as a victim's true identity could be disclosed to defendants and their attorneys. Courts would have the necessary discretion to make disclosure under certain conditions in CSHB 1293, including if the information were essential in a trial.

The bill would be a logical, small extension of current law that allows certain victims with unique safety needs discretion about making certain information public. CSHB 1293 is narrowly drawn and would not harm

the public's right to know about the criminal justice system or formal criminal justice proceedings.

The bill would ensure that if a victim using a pseudonym needed to terminate a lease as allowed by current law, the pseudonym form information could be shared with landlords.

OPPONENTS SAY:

Absent a compelling need, the state should not expand the circumstances under which victims can use pseudonyms, and this bar is not reached by CSHB 1293. Alleged stalking victims are similar to numerous other victims who are required to use real names in public documents and government records relating to criminal cases. In general, the state should not chip away at the public's right to know what is occurring in the criminal justice system.

SUBJECT: Own risk and solvency assessments by insurers and insurance groups

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo, Workman

0 nays

WITNESSES: For — (*Registered, but did not testify*: John Marlow, ACE Group; Jay Thompson, AFACT, Prudential, TALHI; Deborah Polan, AIG; Thomas Ratliff, American Insurance Association; Lee Ann Alexander, Liberty Mutual Insurance; Paul Martin, National Association of Mutual Insurance Companies; Joe Woods, Property Casualty Insurers Association of America; Randy Lee, Stewart Title Guaranty Company; Jennifer Cawley, Texas Association of Life and Health Insurers; Robert Gilbert, USAA; Miles Mathews, Voya Financial Services)

Against — (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas)

On — Doug Slape, Texas Department of Insurance

BACKGROUND: The National Association of Insurance Commissioners is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from 50 states, the District of Columbia, and five U.S. territories.

Insurance Code, sec. 823.002(6) defines an "insurer" to mean any insurance company organized under the laws of this state, a commercially domiciled insurer, or an insurer authorized to engage in the business of insurance in this state. The term includes a capital stock company, mutual company, farm mutual insurance company, title insurance company, fraternal benefit society, local mutual aid association, statewide mutual assessment company, county mutual insurance company, Lloyd's plan, reciprocal or interinsurance exchange, stipulated premium insurance company, and group hospital service corporation. The term does not

include an agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

DIGEST:

HB 1730 would require an insurer or an insurance group to which the insurer is a member to conduct an own risk and solvency assessment, to maintain a risk management framework, and to prepare a summary report of the own risk and solvency assessment. The bill would set criteria for when and how reports would be sent to the commissioner of the Texas Department of Insurance (TDI) and would set a penalty for failing to file a summary report with the TDI commissioner. The bill also would specify confidentiality requirements for reports provided to the TDI under the bill's provisions and the sharing of those reports.

Definitions. The bill would define an "insurer" as defined in Insurance Code, sec. 823.002(6) and would define an "insurance group" to mean the insurers and affiliates included within an insurance holding company system that consists of two or more affiliates, one of which is an insurer.

The bill would define an "own risk and solvency assessment" to mean a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks.

Own risk and solvency assessment and risk management framework. The bill would require an insurer, or the insurance group of which the insurer is a member, to regularly conduct an own risk and solvency assessment consistent with a process comparable to the guidance manual developed and adopted by the National Association of Insurance Commissioners. An insurer or insurance group would have to conduct the assessment annually and at any time there were significant changes to the insurer's or insurance group's risk profile. The bill also would require an insurer — or insurance group, if applicable — to maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on the insurer's material and relevant risks.

Summary report. The bill also would require insurers to prepare a summary report and to make the summary report, documentation and supporting information or a substantially similar report available on examination or on request of the TDI commissioner. A report submitted in a language other than English would have to be accompanied by an English translation of the report. The bill would require the report to be made in accordance with the version of the National Association of Insurance Commissioners' guidance manual in effect at the time a summary report was provided. The bill would define a "summary report" to mean a confidential, high-level summary of the own risk and solvency assessment of an insurer or insurance group.

The bill would require TDI to use procedures similar to the procedures currently used in the analysis and examination of multistate or global insurers and insurance groups when reviewing the summary report or making requests for additional information.

Signing of reports. The reports provided to the TDI commissioner would have to be signed by an insurance group's chief risk officer or a similar executive officer, attesting to the best of the officer's belief that certain criteria had been fulfilled. An insurer that is a member of an insurance group would have to submit reports to the TDI commissioner whether or not the TDI commissioner had requested them if the TDI commissioner was the lead state commissioner of the insurer's insurance group. The lead state commissioner would be determined for these purposes according to the procedures adopted by the National Association of Insurance Commissioners. The TDI commissioner could not request a summary report more than once a year.

Exemptions from the bill's provisions. An insurer would be exempt from the bill's provisions if:

- the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $500 million; and

- the insurance group of which the insurer is a member has annual direct written and unaffiliated premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1 billion.

If an insurer qualified for exemption but its insurance group did not, then the insurance group's summary report would have to include every insurer within the insurance group. An insurance group could submit more than one summary report for any combination of insurers to meet this requirement if the combination of reports includes each insurer within the insurance group. If an insurance group qualified for exemption but an insurer that is a member of the group did not, then the insurer would have to submit a summary report for itself.

A non-exempt insurer could apply to the TDI commissioner for a waiver from the provisions of the bill based on unique circumstances. The bill would define the criteria the TDI commissioner would have to consider in granting a waiver. The bill also would require the TDI commissioner to coordinate with the lead state commissioner and other domiciliary commissioners in considering whether to grant a request for a waiver from an insurer that was part of an insurance group with insurers domiciled in more than one state. The TDI commissioner still could require an insurer that would otherwise be exempt from the provisions of the bill to maintain a risk management framework, conduct an own risk and solvency assessment and file a summary report if the insurer met certain criteria specified in the bill.

Confidentiality. Documents, materials, or other information obtained by, created by, or disclosed to the commissioner or any person under the provisions of the bill, including those shared or received in the performance of the commissioner's regulatory duties and those in the possession or control of the National Association of Insurance Commissioners or a third-party consultant, would be confidential and privileged for all purposes. This includes purposes of Government Code, ch. 552 related to public information, a response to a subpoena, or discovery of admissibility in evidence in any civil action.

The summary report under the bill as well as associated documents and materials would be recognized by the state as being proprietary and to contain trade secrets. The bill would allow the TDI commissioner to use the documents, materials, or related information to further any regulatory or legal action brought as part of the commissioner's official duties. The bill would prohibit the TDI commissioner from otherwise making these documents and materials public without the prior written consent of the insurer. The bill also would prohibit the TDI commissioner and any other person who received own risk and solvency assessment-related information under the provisions of the bill, in an examination, or otherwise under any other law from testifying in any civil action concerning these documents, materials, or information under the bill, including the summary report.

Sharing of information. To assist in the performance of their regulatory duties, the TDI commissioner could, on request, share documents, materials, or other own risk and solvency assessment-related information with certain entities specified in the bill. This information could include confidential and privileged documents, materials, or information under the bill or confidential or privileged documents, materials, or information subject to Insurance Code, ch. 401 related to audits and examinations, Chapter 404 related to a hazardous financial condition, or Chapter 823 related to insurance holding company systems, as necessary.

These entities would need to agree in writing to maintain the confidential and privileged status of the information and verify in writing the entity's legal authority to maintain that status before the TDI commissioner could share information with these entities.

The bill also would allow the TDI commissioner to receive documents, materials, other own risk and solvency assessment-related information, or other relevant information from certain entities specified in the bill. The bill would require the TDI commissioner to maintain these documents, materials, and information as confidential or privileged, with notice and understanding that they also would be confidential or privileged under the laws of the jurisdiction that was the source of the document, material, or information.

The bill also would require the TDI commissioner to enter into written agreement with the National Association of Insurance Commissioners or a third-party consultant that governs the sharing and use of information under the provisions of the bill. The agreement would have to comply with and contain certain requirements specified in the bill. The bill would specify that the TDI commissioner's sharing of information and documents under the provisions of the bill does not constitute a delegation of regulatory authority or rulemaking, and the TDI commissioner is solely responsible for the administration, execution, and enforcement of the provisions of the bill.

The bill would specify that a waiver of an applicable privilege or claim of confidentiality in a document, proprietary and trade-secret materials, or other own risk and solvency assessment-related information does not occur as a result of disclosure of the document, materials, or other information to the commissioner under the provisions of the bill or as a result of sharing information authorized under the bill.

Administrative penalty. An insurer that, without good cause, failed to timely file the summary report required by the bill would commit a violation subject to an administrative penalty under Insurance Code, ch. 84 which governs administrative penalties. Under Chapter 84, the penalty for a violation would not exceed $25,000 unless a greater or lesser penalty was specified in the Insurance Code or in another Texas insurance law.

Each day the violation continued would be a separate violation. The TDI commissioner could reduce the amount of the assessed penalty if the penalty constituted a financial hardship to the insurer.

An insurer would not be required to submit a summary report required by the bill until January 1, 2016.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 1730 would implement the National Association of Insurance Commissioners' model legislation for insurance risk and solvency

assessments, which is needed to proactively and continually assess the overall solvency needs of large insurance carriers and guard against potential financial hazards. The bill would allow the Texas Department of Insurance (TDI) to have the information it needs to calculate risk and ensure that insurance groups are financially solvent and can pay claims.

The bill also would address concerns with these insurance groups that arose during the 2008 economic downturn. Specifically, the bill would provide TDI with access to information regarding insurance groups that have members that are not insurers, and could have a negative impact on the insurers in the holding groups.

Many Texas insurers already are subject to these reporting requirements in other states if they operate outside Texas. The bill would allow TDI to have the same information that is available to insurance departments in other states that have enacted this model legislation.

The bill appropriately would keep reported information confidential. If the state made insurers' proprietary information subject to public disclosure, it could discourage insurers from providing this information to TDI and could lead to lawsuits from insurers.

OPPONENTS SAY:

HB 1730 requires reports that should not be kept confidential. The information that government holds is the people's information and should be made available to consumers and businesses so they can make better decisions in choosing insurance carriers and also have access to information about insurer solvency. TDI could redact certain information if needed when providing information to the public, but the information should not be kept completely confidential.

NOTES:

SB 655 by Eltife, the identical companion bill, was referred to the House Insurance Committee on April 27.

SUBJECT: Requiring rules that allow billing for services of substitute dentists

COMMITTEE: Public Health — favorable, without amendment

VOTE: 11 ayes — Crownover, Naishtat, Blanco, Coleman, Collier, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

WITNESSES: For — Jose Cazares, Texas Academy of General Dentistry; (*Registered, but did not testify*: Miryam Bujanda, Methodist Healthcare Ministries; Tyler Rudd, Texas Academy of Pediatric Dentistry; Rick Black, Texas Dental Association; Jim Foster)

Against — None

On — (*Registered, but did not testify*: Laurie VanHoose, Health and Human Services Commission)

BACKGROUND: Health and Human Services Commission (HHSC) rules, under 1 Texas Administrative Code (TAC), part 15, sec. 354.1060, contain the definitions of a substitute physician, a locum tenens arrangement, and reciprocal arrangements as allowed in the Medicaid program.

Under a locum tenens arrangement, which must be in writing, a substitute physician can assume the practice of a billing physician for up to 90 days under certain circumstances, or longer if the physician has been called or ordered into active duty as a reserve member of the armed forces. Reciprocal arrangements, which do not have to be in writing, allow a substitute physician to cover for a billing physician on an occasional basis, limited to a continuous period of up to 14 days.

Under guidelines issued by the Texas Medicaid & Healthcare Partnership, a group of contractors that helps the HHSC administer Texas Medicaid, a substitute physician must be enrolled in Texas Medicaid.

DIGEST: HB 1661 would require, to the extent allowed by federal law, the

executive commissioner of the Health and Human Services Commission to adopt rules ensuring that the same standards that apply to a physician who bills the medical assistance program for services provided by a substitute physician, such as Medicaid services, also would apply to a dentist who bills for services provided by a substitute dentist. These rules would have to be adopted as soon as practicable after the bill took effect.

The bill would direct a state agency needing a waiver or authorization from a federal agency to implement a provision of the bill to request that waiver or authorization. The affected state agency could delay implementation of affected provisions in the bill until the agency received the waiver or authority.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 1661 appropriately would require the Health and Human Services Commission (HHSC) to allow dentists the same flexibility as physicians to bill for Medicaid services provided by a substitute. Dentists who must be absent from their practices for reasons including prolonged illness, military service, or pregnancy should be able to maintain continuity of care for their patients by allowing a substitute dentist to practice on their behalf.

The Texas Medicaid dental program served more than 2 million unique clients in fiscal 2014, and dental providers reported more than 4.5 million encounters with clients during that time for their services, according to the HHSC. Medicaid currently requires dentists to be re-credentialed for a specific address before they can serve another dentist's patients there, which can be a time-consuming process. Patients who receive dental services under Medicaid might have to change providers or go without services if their designated provider was not available over a period of days or weeks.

The bill would require HHSC to create rules with the same restrictions that apply to physicians who use a substitute. Physicians currently can make reciprocal arrangements on an occasional basis and for up 14

continuous days. They also can utilize a locum tenens agreement for up to 90 days, or longer under certain circumstances involving service in the armed forces. These limitations have worked well for billing physicians who use substitutes. Dentists should have the same opportunity to bill for the Medicaid services provided by a substitute, subject to the same limitations.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Veterans' assistance fund donation on hunting, fishing license application

COMMITTEE: Culture, Recreation and Tourism — favorable, without amendment

VOTE: 6 ayes — Guillen, Frullo, Larson, Márquez, Murr, Smith

0 nays

1 absent — Dukes

WITNESSES: For — (*Registered, but did not testify*: Jim Brennan, Texas Coalition of Veterans Organizations; Chris Frandsen)

Against — None

On — Michael Hobson, Texas Parks and Wildlife; Sarah Tillman, Texas Veterans Commission

BACKGROUND: Government Code, sec. 434.017 establishes the Fund for Veterans' Assistance in the state treasury outside the general revenue fund. Money in the fund may be appropriated only to the Texas Veterans Commission for grants to address veteran's needs and other purposes specified in statute.

DIGEST: HB 1584 would amend Parks and Wildlife Code, ch. 12 to allow a person applying for a hunting or fishing license, either online or in person, to voluntarily contribute a donation of $1, $5, $10, or $20 to the Fund for Veterans' Assistance. The Texas Parks and Wildlife Department would be allowed to deduct the amount of money from the contributions necessary to develop and administer the program. The department would be required to send all remaining contributions to the comptroller for deposit in the state treasury no later than the 14th day of each month.

The Parks and Wildlife Commission would be required to adopt rules as needed and the Parks and Wildlife Department would be required to develop procedures to implement the voluntary contribution provisions by August 1, 2016. The Parks and Wildlife Department would be authorized

to consult with the Department of Public Safety for assistance developing procedures to implement the provisions.

The bill would take effect September 1, 2015, and would apply only to a license purchased on or after September 1, 2016.

SUPPORTERS SAY:

With so many competing state interests it is not always easy to find additional funds in the budget to help veterans. HB 1584 would raise money for a deserving group by asking hunting and fishing license applicants to donate voluntarily. The bill would raise money for the veterans' fund at no additional cost to the state because the cost of running the program would be taken from the voluntary donations.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Enhanced penalties for misuse of official information by public servants

COMMITTEE: General Investigating and Ethics — favorable, without amendment

VOTE: 5 ayes — Kuempel, Collier, S. Davis, Larson, C. Turner

0 nays

2 absent — Hunter, Moody

WITNESSES: For — (*Registered, but did not testify*: Tom "Smitty" Smith, Public Citizen, Inc.)

Against — None

BACKGROUND: Penal Code, sec. 39.06 contains two levels of punishment for the offense of misuse of official information. A public servant who violates the section can be convicted of a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000). A public servant, including a school principal, who coerces another into suppressing or failing to report information to a law enforcement agency can be convicted of a class C misdemeanor (maximum fine of $500).

DIGEST: HB 1539 would link penalties for misuse of official information to the net pecuniary amount gained by the person committing the offense. The bill would establish that an offense is:

- a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) if the net pecuniary gain is less than $100,000;
- a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if the net pecuniary gain is between $100,000 and $200,000; or
- a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) if the net pecuniary gain is $200,000 or more.

The bill would take effect September 1, 2015, and would apply only to an

offense committed on or after that date.

SUPPORTERS SAY:

HB 1539 appropriately would strengthen punishment for public servants who engage in insider trading or who otherwise use nonpublic information to obtain a benefit or to harm or defraud another.

The highest penalty under current law is a third-degree felony, but the bill would allow serious offenders to be charged with a second-degree or first-degree felony. The higher penalties could serve as a deterrent to public servants who would use their positions of public trust for financial gain. Similar to other punishments for financial crimes, the bill would carry greater potential penalties for offenders who gained more money from their crimes.

Enhancing penalties for misuse of official information is not expected to significantly impact state correctional populations, programs, or workloads. In fiscal 2014, there were 15 people arrested, fewer than 10 placed under felony community supervision, and fewer than 10 admitted to state correctional institution for this offense, according to the Legislative Budget Board's criminal justice impact statement.

OPPONENTS SAY:

Insider trading is a serious crime but does not rise to the level of a first-degree felony. Locking up violent offenders for many years does protect the public, but the same level of protection is not needed for nonviolent offenses. There is a cost to taxpayers to sentencing offenders who engage in financial crimes to years in prison when they could be working and paying restitution to those they harmed.

NOTES:

The Senate companion bill, SB 111 by V. Taylor, was referred to the Senate State Affairs Committee on January 27.

SUBJECT: Regulation of abusable synthetic substances

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Crownover, Naishtat, Blanco, Coleman, S. Davis, Sheffield, Zedler, Zerwas

0 nays

3 absent — Collier, Guerra, R. Miller

WITNESSES: For — (*Registered, but did not testify*: Kathy Hutto, Coalition for Nurses in Advanced Practice; Tiana Sanford, Montgomery County District Attorney's Office; Troy Alexander and Michelle Romero, Texas Medical Association; Ryan Van Ramshorst, Texas Pediatric Society; Lon Craft, Texas Municipal Police Association; Michele Owens)

Against — None

On — Brady Mills, Texas Department of Public Safety Crime Laboratory (*Registered, but did not testify*: Karen Tannert, Department of State Health Services)

BACKGROUND: A "consumer commodity" is defined by Health and Safety Code, ch. 431 to mean any food, drug, device, or cosmetic, as those terms are defined in Chapter 431 or by the federal Food, Drug, and Cosmetic Act. It also would include any other article, product, or commodity that is customarily produced or distributed for sale and consumed or used by individuals under circumstances as defined in statute.

The term does not include:

- a meat or meat product, poultry or poultry product, or tobacco or tobacco product;
- a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide and Rodenticide Act or the Virus-Serum-Toxin Act;

- a drug intended for use by man that is not safe for use except under the supervision of a practitioner legally licensed to administer the drug;
- a misbranded drug or device that is a color additive intended only for coloring;
- a drug subject to the provisions of the federal Food, Drug, and Cosmetic Act, sec. 503(b)(1);
- a beverage subject to or complying with packaging or labeling requirements under the federal Alcohol Administration Act; or
- a commodity subject to the provisions of Agriculture Code, ch. 61 relating to the inspection, labeling, and sale of agricultural and vegetable seed.

Health and Safety Code, ch. 481 established the Texas Controlled Substances Act, which categorizes controlled substances into penalty groups and provides specific penalties. Health and Safety Code, sec. 481.1031 defines Penalty Group 2-A as any quantity of a synthetic chemical compound that is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring cannabinoids — effectively, synthetic cannabis or marijuana. Penalty Group 2-A provides offenses for possession of a controlled substance in this group that range from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) to life in prison.

DIGEST:

HB 1212 would allow the Department of State Health Services (DSHS) commissioner to designate a consumer commodity as an "abusable synthetic substance" and would allow the commissioner to issue an emergency order to schedule that substance as a controlled substance.

Definitions. The bill would include within the definitions of "controlled substance" and "controlled substance analogue" Penalty Group 2-A, which governs synthetic cannabinoid substances. The bill also would add Penalty Group 2-A to the list of penalty groups that, for the purposes of prosecution, include controlled substance analogues that are structurally similar to controlled substances and produce a similar effect to those compounds.

Designation as an abusable synthetic substance. The DSHS commissioner could designate a consumer commodity as an abusable synthetic substance if the commissioner determined the commodity was likely an abusable synthetic substance and that the importation, manufacture, distribution, and retail sale of the commodity posed a threat to public health. The commissioner would make the determination based on:

- whether the commodity was sold at a price higher than similar commodities are ordinarily sold;
- evidence of clandestine importation, manufacture, distribution, or diversion of the commodity from legitimate channels;
- evidence suggesting the product was intended for human consumption, regardless of the packaging on the commodity; and
- whether certain other factors suggested the commodity was an abusable synthetic substance intended for illicit drug use.

Emergency scheduling. The bill would allow the DSHS commissioner to emergency schedule a substance as a controlled substance if the commissioner determined that scheduling the substance was necessary to avoid an imminent hazard to public safety, if the substance was not already scheduled, and no exemption or approval was in effect for the substance under the federal Food, Drug, and Cosmetic Act. The bill would set criteria for whether a substance posed an imminent hazard to public safety that would be in addition to existing criteria for scheduling a controlled substance under the Texas Controlled Substances Act.

Publication. If the commissioner scheduled a substance as a controlled substance, the bill would allow the commissioner to publish the new schedule as specified under Health and Safety Code, sec. 481.036(c), and the action would take effect on the date the schedule was published in the Texas Register.

Expiration. The emergency schedule would expire on September 1 of each odd-numbered year if the scheduling occurred before January 1 of that year.

Notice. The bill would require the commissioner to post notice about each

emergency scheduling on the Department of State Health Services' website.

Defense to prosecution for an offense. The bill would create a defense to prosecution for the existing class B misdemeanor offense related to the possession of a controlled substance in Health and Safety Code, sec. 481.119(b). It would be a defense to prosecution for this offense that the actor requested emergency medical assistance in response to their own possible controlled substance overdose or that of another person.

The bill would remove an existing affirmative defense to prosecution for an offense involving the manufacture, delivery, or possession of a controlled substance analogue that the analogue was not in any part intended for human consumption.

Enforcement of abusable synthetic substances. A commodity classified as an abusable synthetic substance under the bill would be subject to enforcement actions under the Texas Food, Drug, and Cosmetic Act and would be subject to other provisions in that act that apply to food and cosmetics.

The bill would take effect September 1, 2015, and would apply only to an offense committed on or after that date.

SUPPORTERS SAY:

HB 1212 would allow the DSHS commissioner to regulate synthetic drugs as they evolve and help prevent Texans, especially teenagers and young adults, from dying from these drugs. Synthetic drugs are created specifically to mimic natural illicit drugs, but they can be more potent and dangerous than illicit drugs, causing death, hospitalization, and aggressive behavior. The Food and Drug Administration does not regularly regulate these drugs because they are commonly labeled "not for human consumption" or packaged as potpourri or incense. The bill would address this gap in regulation by allowing the DSHS commissioner to issue an emergency order to add a substance to a controlled substance schedule and by removing an existing defense to prosecution for a person committing an offense involving the manufacture, delivery, or possession of a controlled substance analogue that was not intended for human consumption.

The bill is necessary because manufacturers can quickly and easily change the molecular compounds included in their products to skirt state and city laws, and the Legislature cannot respond to these changes during the interim. Other filed bills this session seek to add additional synthetic substances to the regulated penalty groups, but these bills are not enough. People could overdose because the state would not have the ability to designate and regulate abusable synthetic substances at all times, including outside of a legislative session. The bill would provide this needed authority to protect individuals from these dangerous, deadly drugs.

The bill would not contribute to the overcriminalization of drug offenses because the bill aims to target distributors, rather than individuals, in order to take the drugs off the street and out of stores. The emergency scheduling in the bill intentionally has a short expiration date to allow the Legislature to have final say in any scheduling that occurred during the interim. The bill also would prevent overcriminalization by adding a defense to prosecution for an offense related to the possession of a controlled substance for a person who requests emergency medical assistance in response to an overdose due to a synthetic drug.

OPPONENTS SAY:

HB 1212 could contribute to the overcriminalization of drug offenses. Not all substances targeted by the bill are bought or labeled for human consumption, and the bill would penalize those who bought a synthetic cannabinoid substance for another use. By allowing the commissioner to emergency schedule substances according to a vague standard, the bill could result in more arrests and incarceration, stretching the capacity of courts and jails with nonviolent offenders. The bill also could overly penalize teenagers, to whom these drugs are commonly marketed.

SUBJECT: Requiring a strategic plan to reduce HPV-associated cancer

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Crownover, Naishtat, Blanco, Coleman, Collier, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

1 absent — S. Davis

WITNESSES: For — (*Registered, but did not testify*: Cam Scott, American Cancer Society Cancer Action Network; Juliana Kerker, American Congress of Obstetricians and Gynecologists, District XI (Texas); Mariah Ramon, Teaching Hospitals of Texas; Alice Bufkin, Texans Care for Children; Darren Whitehurst, Texas Medical Association; Kevin Cooper, Texas Nurse Practitioners; Susan Lemons)

Against — (*Registered, but did not testify*: Barbara Harless, North Texas Citizens Lobby; MerryLynn Gerstenschlager, Texas Eagle Forum)

On — (*Registered, but did not testify*: Wayne Roberts, Cancer Prevention and Research Institute of Texas; Kathleen Schmeler, UT MD Anderson Cancer Center)

DIGEST: CSHB 1282 would require the Department of State Health Services (DSHS) to develop a strategic plan to significantly reduce morbidity and mortality from human papillomavirus (HPV)-associated cancer.

DSHS would be required to collaborate with the Cancer Prevention and Research Institute of Texas (CPRIT) and could convene any necessary workgroups to develop the plan. Members of the workgroup could include health care providers and researchers, educators, HPV-associated cancer survivors, members of community- and faith-based organizations, and representatives from at-risk populations.

In developing the strategic plan, DSHS would consider the prevention,

screening, and treatment for HPV-associated cancer. Development of the plan would include:

- identifying barriers to effective prevention, screening, and treatment and methods to increase the numbers of people screened and vaccinated;
- reviewing current technologies and best practices for HPV-associated cancer screening, as well as technologies related to diagnosis and prevention of HPV infection;
- developing methods for creating partnerships to increase awareness of HPV-associated cancer and of preventive and diagnostic measures;
- reviewing current prevention, screening, treatment, and related activities in this state and identifying areas in which the services for those activities are lacking;
- estimating direct and indirect state health care costs associated with HPV-associated cancer;
- identifying actions necessary to increase vaccination and screening rates and reduce the morbidity and mortality from HPV-associated cancer and establish a schedule for implementing those actions; and
- making recommendations to the Legislature on policy changes and funding needed to implement the strategic plan.

DSHS would be required to deliver to the governor and members of the Legislature the strategic plan and recommendations on goal implementation and schedule compliance related to the strategic plan by December 31, 2016.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1282 could help to significantly reduce morbidity and mortality from human papillomavirus (HPV)-associated cancers by directing Department of State Health Services (DSHS) to develop a strategic plan to address this widespread issue.

HPV infections affect about 79 million men and women, and cancers associated with the infection account for thousands of deaths each

year. According to the Centers for Disease Control and Prevention (CDC), HPV infection also is the most common sexually transmitted infection in the United States. HPV is responsible for many cervical cancers and is associated with a significant increase in oropharyngeal cancer, which is a type of cancer that can be located in the middle part of soft palate, the base of the tongue, and the tonsils. More than half of oropharyngeal cancers are linked to HPV, and it is estimated that HPV will cause more oropharyngeal cancers than cervical cancers in the United States by 2020. CSHB 1282 would help to advance research that could prevent or even identify a cure for HPV-associated cancers.

The strategic plan would be required to consider various preventive and diagnostic efforts, including ways of increasing access to the HPV vaccine, but in no way would the bill mandate vaccines and would not impact patients directly. The 85th Legislature could use the findings to take further action if it so chose.

OPPONENTS SAY:

In requiring DSHS to develop a strategic plan on HPV-associated cancers, CSHB 1282 could amount to the state advocating for the HPV vaccine. The Legislature should be aware of the potential to send a message that could be at odds with the wishes of parents who might choose not to have their children vaccinated against HPV. The HPV vaccine could have risks associated with it that should be taken into consideration.

NOTES:

The companion bill, SB 1701 by Huffman, was referred to the Senate Health and Human Services Committee on March 23.